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**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION**

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FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

**FEDERAL MOTOR CARRIER SAFETY REGULATIONS;
SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER-
CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE
COMMERCE**

NOTICE OF PROPOSED RULEMAKING; REQUEST FOR COMMENTS

COMMENTS OF THE AMERICAN BUS ASSOCIATION, INC.

The American Bus Association ("ABA") is the national trade association of the intercity bus industry. ABA has over 3,000 members; of those, more than 800 member companies are bus operators. They offer a variety of bus services:

- * regular route intercity service between fixed points on set schedules;
- * charter service, where a group of passengers (such as a church or organization) purchases all of the seats on a bus for exclusive use on a particular trip;
- * tour service, which usually includes stops for sightseeing and recreational purposes;
- * commuter bus services, generally from the suburbs into urban areas; and
- * special operations, which are scheduled services to enhance public transportation systems (such as bus service from a city to an airport), or which may be connected with a special event or attraction at the destination.

The rest of ABA's members include representatives of the travel and tourism industry, and the manufacturers and suppliers of products and services used by the bus industry.

ABA and its member companies have led the effort to expand the passenger carrier component of the definition of a Commercial Motor Vehicle (CMV) so as to apply the Federal Motor Carrier Safety Regulations (FMCSRs) (49 C.F.R. Parts 350-399) to all motor carriers of passengers operating in interstate and foreign commerce, with few exceptions. ABA had encouraged Congress to enact the provision in the ICC Termination Act of 1995 that amended the passenger carrier component of the Commercial Motor Vehicle (CMV) definition in 49 U.S.C. § 31132(1)(B) to include a vehicle that is “designed or used to transport passengers for compensation, but excluding vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places . . .” Notwithstanding this statutory change, the FHWA failed to amend the FMCSRs to include any passenger vehicles that carried fewer than 16 passengers.

As a result of that lack of action, ABA strongly encouraged Congress to enact subsection 4008(a)(2) of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 (June 9, 1998). That change further amended the passenger-vehicle component of the definition of a commercial motor vehicle in 49 U.S.C. § 31132(1)(B) to include any vehicle that is “designed or used to transport more than 8 passengers (including the driver) for compensation.” In addition, under subsection 4008(a)(2) of TEA-21, operators of vehicles defined by section 31132(1)(B) automatically became subject to the FMCSRs on June 9, 1999, except to the extent that the FHWA determines to exempt them through a rulemaking proceeding. Although the FHWA issued an Advance Notice of Proposed Rulemaking prior to the congressional deadline, it took no further action although the FMCSRs, except for 49 CFR Parts 382 and 383 became applicable. The two notices published September 3, 1999 exempted all small passenger-carrying vehicles from the FMCSRs for 6 months while FHWA conducted a

separate rulemaking action to determine what extent to apply the FMCSRs. ABA was at that time concerned that the FHWA chose to exempt small passenger vans from a significant portion of the safety regulations found in the FMCSRs completely for a period of six months. This approach was directly contrary to the express congressional mandate to apply the FMCSRs to these carriers.

Discussion of FHWA's Proposal

In order to gather information about the operational safety of passenger vans, the agency has published a final rule, effective February 12, 2001, that requires that motor carriers operating commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver) for compensation complete and file a motor carrier identification report (49 CFR 385.21); comply with the FHWA's CMV marking regulation (49 CFR 390.21); and maintain an accident register (49 CFR 390.15).

ABA strongly agrees that all operators of small passenger vans should comply with the above-referenced sections, but believe that the FHWA must go beyond these provisions to ensure the safety of the motoring public, customers of passenger vans, and comply with Congressional intent, especially for small passenger vans that operate over long distances. Therefore, ABA is pleased that the FMCSA has also proposed to apply the FMCSRs (except for the drug and alcohol testing requirements and commercial driver's license provisions) to all CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce when the operators of the CMVs are directly compensated for such services and the transportation of any passenger covers more than 75 air miles.

FMCSA Should Clarify The Proposed Criteria

In order to clarify the proposal, the ABA suggests that FMCSA adopt the term **“Primarily Engaged in For-Hire Transportation”** as an identifier in lieu of the proposed term “directly compensated.” This change would limit the application of the FMCSRs to those carriers, in interstate or foreign commerce, that have a primary business of providing passenger transportation. It would exclude hotel and rental car shuttles and other similar operations that are primarily non-transportation entities, but might have operations that go across state lines and otherwise would be included in the requirements.

The Department of Transportation (DOT) is familiar with the concept of whether an entity is “primarily engaged in transportation” and “for-hire” for purposes of application of its rules. The DOT uses the terminology “primarily engaged in transportation” is concept in applying the requirements of the Americans with Disabilities Act (ADA), 42 U.S.C. § § 12181 et seq. In 1998, the DOT issued final regulations for over-the-road buses under the ADA, using the distinction between those carriers primarily engaged in transportation and those that are not. See 63 Fed. Reg. 51670, 51692 (September 28, 1998). The term “for-hire motor carrier” is defined in Section 390.5 of the FMCSRs as “a person engaged in the transportation of goods or passengers for compensation.”

Other Requirements of the Proposal

The ABA generally agrees with all other aspects of FMCSA’s proposal. However, ABA believes that the FMCSA should require the adoption of compatible intrastate standards for 9-15

passenger vans as a condition of a state's Motor Carrier Safety Assistance Program participation. ABA believes that failure to require intrastate adoption of this regulation will significantly weaken the rule. The stated justification for not applying the interstate requirement to all states because 32% of fatal van accidents occurred in 3 states (Florida, Texas, and California) should not be considered. Does that mean that the other 68% of the fatalities noted by FMCSA should be ignored? Certainly not. Given the admitted lack of complete data regarding the subject vehicles accident and fatality record, we have to question the rationale for this provision. Whether or not some states have more fatalities than others is irrelevant, and should not be considered by FMCSA. Further, even if full and complete safety data is available for 9-15 passenger vans, what guarantee does FMCSA have that numbers will show the same pattern in the future?

Conclusion

ABA believes that the FMCSA has taken a step forward to address Congressional intent that the FMCSA regulate small passenger vans. We believe that Congress intended for FMCSA to focus initially upon commercial van services that travel distances comparable to those of intercity bus companies, and therefore do not object to the imposition of the 75 mile air mile radius standard at this time. However, since the FMCSA will now have the ability to acquire badly needed safety data on these small passenger vans, we suggest that the FMCSA publish a Notice in the Federal Register one year from the date of enactment of this rule, and in each subsequent year, that includes pertinent safety data on 9-15 passenger vans. This would afford

the public and FMCSA the opportunity to determine, based on data, whether or not the 75 air mile radius threshold should be reduced or eliminated altogether.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. Pantuso". The signature is fluid and cursive, with the first name "Peter" and last name "Pantuso" clearly distinguishable.

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NATIONAL NEWS

NHTSA Warns of Rollover Risk in Passenger Vans

15-Seat Vehicles, Commonly Used by Colleges, Implicated in Deaths of Five Student-Athletes

number of the organizations that own or use the vans. "This is strictly to make the users of these vehicles aware of the research," he said.

Auto safety advocates said that is not enough. Clarence Ditlow, director of the Center for Auto Safety, said the vehicles are hazardous and NHTSA should advocate they not carry passengers until they are modified. Ditlow suggested that their roofs be strengthened to protect passengers in rollovers, and that laminated safety glass be installed.

"Simply telling people to drive more safely is not the answer," said Ditlow. "Where was NHTSA when they saw cars go being modified to carry passengers?"

NHTSA data show that from 1993 to 1999, there were 71 single-vehicle rollovers in 15-passenger vans, involving 126 fatalities. There are about 1.4 million of the vans on the road, the agency said, but it's impossible to know how many of them have been reconfigured to carry passengers.

Under federal law, 15-passenger vans cannot be used to transport school-age children. The agency fined several local districts last year for selling the vehicles to local school districts. But there is no restriction against using them to transport college students.

The vans are popular with colleges and universities because they are an economical way to transport student-athletes. In light of a recent rash of single-vehicle van crashes that took the lives of five college athletes and injured 43 others, however, some athletic directors have reconsidered their use.

The National Collegiate Athletic Association does not have a national travel policy for its members, but it said it would forward the warning to all the schools. "I think all member schools are interested in safety issues and they will see how it applies to them," said NCAA spokesman Wally Renfro. "At the end of the day, it's like the 55-mph speed limit. You're dependent on individual compliance."

Jone Dowd, associate director of athletics at Catholic University, said she thought it would be tough to enforce a seat-belt rule for the athletes riding behind the driver. "Most of them get in the van and go to sleep," she said. "They bring pillows and stretch out. She said the university has not had a serious accident in 30 years."



FILE PHOTO/RY CHUCK KENNEDY—NIGHT RIDER

Center for Auto Safety Director Clarence Ditlow said NHTSA should warn drivers not to use the vans to carry passengers.

cloning of this vehicle changes between the two loading conditions during extreme maneuvers and that a fully-loaded van is inherently less stable than an unloaded one."

Even when carrying between one and four passengers, the large vans were 17 percent more likely to be involved in a rollover accident than smaller vans or minivans, the study said.

Tyson said the agency was in the process of contacting over 100 manufacturers of vans and minivans, the study said.

Federal highway safety regulators yesterday warned users of 15-passenger vans—mostly colleges, hotels, civic groups and senior-citizen shuttle services—that they are three times as likely to roll over when carrying 10 or more passengers as when carrying fewer people.

The National Highway Traffic Safety Administration decided to study the problem after several high-profile accidents that killed college athletes traveling in vans to and from sporting events.

The models NHTSA examined include the Chevrolet Express, GMC Savana, Dodge Ram Van and Wagon, Ford Econoline, Ford Club Wagon, and GMC Rally/Vandura. Auto manufacturers reported that 412,893 of the vans were sold last year and said that probably only a tiny percentage of those were used for passenger trips.

"These are perfectly safe vehicles if they are used properly," said Mike Morrissey, a spokesman for General Motors Corp. "People should always remember that loading affects handling characteristics."

NHTSA advised that the vans be operated by experienced drivers who understand that a large passenger van handles differently than a typical car. Drivers that carry 16 or more passengers must have commercial licenses.

NHTSA also noted that seat belts dramatically improve chances of surviving a rollover. It said 80 percent of drivers and passengers who died in single-vehicle rollovers last year were not buckled up.

"Our concern is the handling characteristics of these vehicles changes dramatically when they are fully loaded with 10 or more passengers," said Rae Tyson, a NHTSA spokesman. "The risk of rollover increases three times when they are loaded."

The NHTSA study found that with 10 or more passengers in the van, its center of gravity shifts to the rear and upward, increasing the likelihood of a rollover—especially at the hands of an inexperienced or fatigued driver.

"The results presented do illustrate potential handling problems that may occur for a heavily loaded 15-passenger van," the study said. "The essential message is that the han-

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